

**IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT, HAMILTON COUNTY**

STATE OF TENNESSEE, ex rel. ANNE B. POPE,)
in her official capacity as COMMISSIONER OF THE)
TENNESSEE DEPARTMENT OF)
COMMERCE AND INSURANCE,)

Petitioner,)

No. 02-0079
Part I

vs.)

UNITED STATES FIRE INSURANCE COMPANY;)
UNITED STATES FIDELITY AND GUARANTY)
COMPANY; EMPLOYERS REINSURANCE)
CORPORATION; UTICA MUTUAL INSURANCE)
COMPANY; INSURANCE COMPANY OF NORTH)
AMERICA; and SAFECO INSURANCE COMPANY)
OF AMERICA)

Respondents.)

In matter of Bonds held by the Commissioner)
for Workers' Compensation Self-Insurance of Tennessee)
employer, NORTH AMERICAN ROYALTIES, INC.,)
and its subsidiaries, Wheland Holding Company, Inc.,)
Wheland Manufacturing Company, Inc. and Wheland)
Foundry, LLC, debtors in possession;)

**VERIFIED PETITION BY COMMISSIONER OF COMMERCE AND INSURANCE
FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF FOR TURN-OVER OF
BOND PROCEEDS POSTED FOR WORKERS' COMPENSATION SELF-INSURANCE
UNDER TENN. CODE ANN. SECTION 50-6-405;
FOR APPOINTMENT OF A RECEIVER/ADMINISTRATOR OF BOND FUNDS;
REQUEST FOR EXPEDITED HEARING AND RELIEF**

Anne B. Pope, in her official capacity as Commissioner of the Tennessee Department of
Commerce and Insurance, as her verified petition to obtain the benefit of proceeds of bonds
covering various periods for the outstanding self insured Tennessee workers' compensation

liability of employer in bankruptcy, North American Royalties, Inc., and its subsidiaries Wheland Holding Company, Inc., Wheland Manufacturing Company, Inc. and Wheland Foundry, LLC, (collectively “NAR/Wheland”) and for related injunctions, states as follows:

INTRODUCTION

1. This action is brought by the Commissioner of the Tennessee Department of Commerce and Insurance, Anne B. Pope, (“Commissioner” and “Department”), with the leave of the Bankruptcy Court overseeing NAR/Wheland, to assure the establishment of a means for claims to be brought by the employees of NAR/Wheland pursuant to Tenn. Code Ann. § 50-6-405 directly against several bonds pledged to the State and Commissioner in a fiduciary capacity for outstanding Tennessee workers compensation liability of the self-insured employer, NAR/Wheland. NAR/Wheland has halted any payments to employees for its pre-bankruptcy petition workers compensation liabilities and there may be over 200 employees with outstanding claims. Pursuant to the Bonds on file with the Department, the various Bond Company Respondents are firmly bound to the State of Tennessee for the use and benefit of the employees of NAR/Wheland in varying penal sums which are to be paid to the State of Tennessee. However, this Court’s equitable powers are sought to assure that Bond funds are turned over through this action and applied to their statutory purpose. The Bonds are direct obligations by the Bond Companies to the persons who may be entitled to such sums for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons. Because of the immediate prospect of multiple and conflicting suits and judgments regarding the Bonds under Tenn. Code Ann. § 50-6-405, and the potential for liabilities in excess of the penal sums available, the Commissioner seeks to bring all

such suits into this one equitable proceeding through the establishment of a court-administered receivership to be funded with the Bond proceeds, and expenses and court costs of administration to be charged to the Bond proceeds or jointly funded by the Bond Company Respondents. Upon the conclusion of this litigation, remaining bond proceeds would be returned to the Bond Companies pursuant to order of this Court.

2. The Commissioner is informed and believes, based on the official records of said bonds on file with the Department, that the following is the list of the Bond Companies obligated in this case, and the apparent time-period and penal sum of coverage of the bonds:

1) United States Fire Insurance Company ("USFIC") Bond no. 610-221502-8 for \$975,000, effective as of 11-18-1999, cancelled effective 11-23-2001;

2) United States Fidelity and Guaranty Company ("USF&G") Bond no. 51-0110-17921-96-01, effective 02-12-1996 for \$350,000; effective 10-01-1998 increased to \$600,000 (with aggregate liability not to exceed \$600,000), cancelled effective 02-12-2000;

3) Employers Reinsurance Corporation ("Employers Re") Bond No. DC-32182-X, effective 06-30-1988 for \$200,000; effective 08-02-1990 increased to \$300,000; effective 06-30-1991 bond number changed to DC-32830-X; effective 11-03-1993 increased to \$350,000, cancelled effective 02-12-1996;

4) Utica Mutual Insurance Company ("Utica") Bond no. SU 36155, effective 07-01-1985 for \$200,000, cancelled effective 07-01-1988;

5) Insurance Company of North America ("INA") Bond No. 913319, effective 07-01-1976 for \$68,000, effective 07-01-1977 increased to \$80,000; effective 09-01-1979 increased to \$125,000; effective 09-01-1983 increased to \$200,000, cancelled effective 07-01-1985; and

6) a Safeco Insurance Company of America (“Safeco”) Bond No. 2439369 (amount still to be located), effective 07-01-1974 to 07-01-1976.

(See True and Correct copies of the available Bonds and related correspondence are attached hereto as Exhibits B-1, B-2, B-3, B-4, B-5 and B-6 respectively., and incorporated herein by this reference).

Tenn. Code Ann. § 50-6-405 permits lawsuits in the name of employees of North American Royalties, Inc. and its subsidiaries, Wheland Holding Company, Inc., Wheland Manufacturing Company, Inc. and Wheland Foundry, LLC to enforce Tennessee workers’ compensation claims directly against the security held by the Commissioner when their self-insured employer is not paying claims. The Commissioner is informed and believes based on currently available information submitted by NAR/Wheland, that claims active within the last year have involved injury dates within the effective dates of at least the USFIC, USF&G, Employers Re, and Utica Bonds, and that other claims could be asserted through this proceeding relating to the bonds of INA and Safeco. The outstanding liability to such claimants as well as to others is unknown, and could exceed the penal sums of some of these bonds based on estimates currently available. Therefore, due to the immediate need for access to the funds, the Commissioner believes the Bond Companies should be required to pay over their penal sums to the State pending disposition through this action, and so that the Commissioner could propose their fair distribution.

3. NAR/Wheland ceased paying any of its self-insured workers’ compensation liability since filing for bankruptcy protection under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., in United States Bankruptcy Court, Eastern District of Tennessee, Southern Division (Bankruptcy Court) on November 7, 2001. The Bankruptcy Court, on January

11, 2002, has lifted the automatic stay related to any of the self insurance bonds to allow the Commissioner to bring an action to administer the bonds in the Chancery Court of Hamilton County, and ordered the bonding companies to “tender funds called by the State of Tennessee for the payment of workers compensation benefits pursuant to an order of the Chancery Court of Hamilton County.” Therefore it is appropriate under Tenn. Code Ann. § 50-6-405 that an administration promptly be established to permit the bond proceeds to be made available for the payment of valid and unpaid workers compensation claims subject to Tennessee law.

4. This petition seeks an expedited order:

A. First, to cause the Bonding Companies to bring such security funds as released by the Bankruptcy Court posted by the employer into the jurisdiction of this Court,

B. To require the Respondent Bonding Companies to immediately furnish the maximum penalty amounts on the Bonds to the Commissioner for safekeeping and deposit at interest in an account or accounts controlled by her pending disposition in accordance with the purposes of the statutes and orders of this Court,

C. To consolidate the suits and claims that could be brought against the Bonds (collectively, the “Bonds” described below) under Tenn. Code Ann. § 50-6-405 and to **enjoin**, temporarily and permanently, consistent with the Bankruptcy Order and such consolidation, any other form or venue of suit against the Bonds held by the Commissioner, or the State, and

D. Finally, to promptly and effectively administer the Bonds, the Commissioner proposes that the Bonds so tendered be made available for the purposes of the Commissioner’s proposed Court-supervised administration and determination of the claims of such employees against the Bonding Companies as well as any equitable proposal for the distribution of such

funds. The Commissioner recommends that a receiver be appointed for this administration, and conservation and disposition of the Bond proceeds under Tenn. Code Ann. § 29-1-103 and pursuant to T.R.C.P. 66. The receiver would act under the supervision of this Court, to give expeditious notice to NAR/Wheland employees who potentially may be claimants on the Bonds, to take proofs of claims and to evaluate them, with the assistance of contracted workers compensation administrative company, and recommend a plan for the equitable distribution of such payments to be made from the Bond Proceeds as authorized by the Court in light of the claimants' entitlement to workers' compensation benefits and the equitable purposes of the Bonds.

The Commissioner requests that expenses and costs of the Commissioner's proposed receiver and administration would be charged to the Bonds or to the Bonding Companies, as ordered by this Court. If the Court rejects this system and no administration is funded, the Commissioner alternatively proposes that the Court order the Bonding Companies to tender and permit the State to tender any Bond proceeds made available into this Court until the Court disposes of claims against them. Thereafter the Court might appoint a special master under T.R.C.P. Rule 53 to handle claims and costs could be charged to the Respondents.

5. The Commissioner is seeking to head off the undesirable delays and inefficient system entailed if the Bond Companies defend all the claims individually through their own litigation and settlement methods in this action. The Commissioner is seeking to avoid the necessity of employees filing direct suits for the Bonds, entailing extra expenses to them which would lessen their available benefits. Moreover, an administrator appointed by this Court would provide coordination and direction to the litigation, to achieve notice to employees and fulfill the

statutory purpose of furnishing these bonds for the use and benefit of the injured employees whose employer no longer is paying ongoing workers compensation benefits.

6. **Regarding Ongoing Medical Expense Payments** — Unless specifically ordered by this Court with funding from the Respondents and designation of an appropriate and qualified administrator approved by the Court, the Commissioner would not institute interim payments for medical or disability benefits before claims are ultimately determined. Such an administration could require more intensive and expensive ongoing services, including medical determinations, from a workers compensation administrator such as NAR/Wheland used prior to its bankruptcy, as well as a determination by the Court as to what amount justly should be made available to fund those payments, with what frequency, and for what duration, before the aggregate claims liability is known. The Commissioner moreover apprises the Court that payments made on any immediate basis will have the potential to limit funds available for later distributions and could create disparate recoveries. In that regard, the Commissioner would request orders of the Court finding cause for such payments, and explicit authorization for any system of early payments and funding of the pertinent administrative costs.

7. **Bankruptcy Court Authorization** -- The Commissioner has obtained an Order dated January 11, 2002 of the Bankruptcy Court that authorizes this action based on the Commissioner's Emergency Motion to Lift Stay (See Order attached as Exhibit A). On or about November 7, 2001, NAR and Wheland Holding Company, Inc., Wheland Manufacturing Company, Inc. and Wheland Foundry, LLC filed petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Tennessee, Southern Division, now consolidated under case number 01-17271. On November 15, 2001, the

Department withdrew approval from the employer to be self-insured in the State of Tennessee for workers' compensation liability. The employer stopped paying workers' compensation claims on November 7, 2001. The Commissioner received numerous inquiries, complaints and requests for assistance from Tennessee workers whose access to medical care and daily necessities have been severely limited or completely blocked by the debtor in possession's decision not to continue to pay injured workers. Therefore, the Commissioner moved for an expedited order alleging irreparable harm to the Tennessee workers if these security funds were not made available for the payment of Tennessee workers' compensation claims. The Commissioner has been informed by NAR's workers compensation self-insurance administrator that over 200 active open claims of employees exist with respect to the self-insurance period of NAR/Wheland. The aggregate estimated reserve liability so far calculated by the NAR/Wheland claims administrator, exceeded \$1.1 million. It would appear to the Department that the claims estimates for the most recent injuries could require substantial revision, because little information had yet become available with respect to the most recent period for the claims estimates.

8. The Bankruptcy Order does not resolve, and hence reserves to this Court, any issues with respect to the manner of funding the Chancery Court administration required for the disposition of the Bond Proceeds. All such prior administrations undertaken by the Department of Commerce and Insurance have funded the necessary notice and determination of claims with proceeds of the security posted by the self-insured employers pursuant to statute. Therefore, the instant lawsuit must **as a threshold inquiry** determine how or if any administration is to be funded to take claims against the various bonds, other than the Bond Companies individually defending and litigating each such claim against their Bonds.

9. The Order lifts the automatic stay to permit the Commissioner to commence an action seeking administration of any bonds held by the State of Tennessee for the benefit of Debtors' injured workers subject to workers compensation benefits under State law, Tenn. Code Ann. § 50-6-101, et seq., in this Chancery Court action. The Bankruptcy Order dictates that the stay has been lifted solely to the extent and for the purpose of the State bringing this action, but continues to stay any other claims filed in state or federal court against the State of Tennessee, the Debtors, or the bonding companies with respect to claims against the bonds. The Commissioner asks for hearing on and prompt entry of an order of temporary injunction required to bring all the potential claims into this one suit and proceeding, and establishment of a procedure to take all the claims so that these claims can be made as contemplated by Tennessee statute and the Bankruptcy Order.

10. **The Self-Insurance Security** - The subject Bonds were filed with the Department as the Commissioner's condition under Tenn. Code Ann. § 50-6-405(a)(2), enabling a Tennessee employer, North American Royalties, Inc. and its subsidiaries Wheland Holding Company, Inc., Wheland Manufacturing Company, Inc. and Wheland Foundry, LLC, to self-insure for its workers' compensation liability in Tennessee for over three decades until NAR/Wheland obtained workers compensation insurance starting as of November 15, 2001. Tenn. Code Ann. § 50-6-405, states in relevant part:

- (a) Every employer under and affected by the Workers' Compensation Law shall:
 - [Insure]. . . ; or
 - (2) Furnish to the commissioner of commerce and insurance satisfactory proof of such employer's financial ability to pay all claims that may arise against such employer under [Tenn. Code Ann. title 50, chapter 6] and guarantee the payment of the same in the amount and manner and when due as provided for in this chapter.

(b) If the employer elects to proceed under subdivision (a)(2), the [Commissioner] shall require the applicant to file with the department of commerce and insurance and maintain the following:

(1) A deposit of acceptable negotiable securities with a market value of not less than one hundred twenty-five thousand dollars (\$125,000) or a bond in the same amount. The securities or bond shall be held by the [Commissioner] and be conditioned to run directly for the benefit of the employees subject to the Workers' Compensation Law and may be enforced by them directly in an action in their name. All indemnity bonds filed under this provision of law must be issued by an insurance company authorized to do business in Tennessee and must contain a provision requiring the issuer to give the [Commissioner] thirty (30) days' written notice of intention to revoke or cancel such bond.

*** * * ***

(Emphasis added). NAR was permitted by the Commissioner to furnish proof of its financial ability to pay all claims that might arise against the employer under Tenn. Code Ann. § 50-6-101 *et. seq.* and to guarantee the payment of the claims in the amount, manner and when due as provided in that chapter.

11. NAR satisfied the requirement under Tenn. Code Ann. § 50-6-405(b)(1) of securities or bond by providing Bonds effective for the period of self-insurance. The Bonds issued by all the Bonding Companies recite that they are a “direct obligation by the principal and surety herein either jointly or severally, to the person who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation and may be sued upon and enforced in the name or names of such person or persons.” Together, these Bonds furnish a potential large fund or pools of funds for outstanding self-insured workers’ compensation liability, but it is unknown whether the Bonds will fully discharge the liabilities of NAR/Wheland for which they were posted. Therefore, it may be necessary to have an equitable distribution for these Bonds. However, the Bonds, other than indicating the Bonding companies

may be sued directly for liability, for which they would have to defend, do not otherwise indicate how the administration is to be funded, such as for notices to be sent out, claims evaluated, or disbursement authorized to pay claims. It is the Commissioner's recommendation that the Bonding Companies be required, in equity, to establish a procedure for the efficiency of this court proceeding to most fairly administer their respective liabilities, and to fund that procedure. In keeping with prior administrations, the Commissioner has recommended procedures and a receiver familiar with receiverships so as to provide a method for speedy notice to be given; however this recommendation is predicated on the availability of funding from the Bonds; and failing the Respondents' being ordered to establish that funding for the court-appointed administrator, the Commissioner must respectfully request this Court to require the Bond Companies to propose an adequate equitable alternative that would serve the purpose of the Bonds to provide for the disability and medical expenses of NAR's injured workers.

12. **Excess Policies of Insurance** - For the protection of the self-insurance Bonds in this petition, the Commissioner would ask that to the extent excess insurance is directly made available for the relevant claims, those amounts should not be recovered against the Bonds. The Bankruptcy Order states that the automatic stay was lifted to allow any Tennessee workers' compensation claimant to proceed in State Court to the extent that recovery in such action is covered and payable directly to the employee by a policy of insurance other than the Bonds being administered in the Chancery Court here. (See Bankruptcy Order, Exhibit A, page 2). The coverage of NAR/Wheland's excess carriers therefore is not a subject of this Bond administration Petition. However, although excess carriers are not parties at this time, the Plan of Administration may take into account excess coverage availability if necessary.

JURISDICTION AND VENUE

13. The Hamilton County Chancery Court has jurisdiction for purposes of granting an injunction and affording the equitable relief related to administering this fund held by the Commissioner where the principal on said bonds, NAR/Wheland, has principal offices in this county. This Court has power to grant an injunction under Tenn. Code Ann. § 29-1-101 and §§ 29-1-105 --106 to enjoin multiple lawsuits, and the power to grant a receiver for the safekeeping, collection, management and disposition of property in litigation, whenever necessary to the ends of substantial justice. Tenn. Code Ann. § 29-1-103. Venue is proper in Hamilton County and the Commissioner chooses to bring the action here, because Hamilton County is the corporate residence of NAR/Wheland, and numerous employees who would make claim on the Bonds are residents and had in fact filed prior actions for workers compensation benefits in this Court and county. The equitable and convenient venue for bringing all claims against the Bonds into one action for the equitable and fair distribution of such Bonds, particularly as it may become inadequate to the full payment of just claims, is appropriate in the situs of the employer, the principal on the bonds. Under Tenn. Code Ann. § 50-6-405, the Bonds which are subject of this suit may be enforced by employees of NAR/Wheland directly in actions in their name.

THE PARTIES

14. The petitioner is Anne B. Pope, the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). The Commissioner is responsible under state workers' compensation statutes pertaining to the regulation of employers' workers' compensation insurance to review proof of employers' financial ability to pay workers' compensation obligations and to take security filed by self-insured employers for the benefit of

workers' compensation claimants under the provisions of Tenn. Code Ann. § 50-6-405. The Department's insurance division, self-insurance section, receives proof to document any security filed by the Tennessee employers under this statute.

15. North American Royalties, Inc., and its subsidiaries Wheland Holding Company, Inc., Wheland Manufacturing Company, Inc. and Wheland Foundry, LLC, (collectively "NAR/Wheland"), debtors in possession, are the employers to which the workers compensation self-insurance Bonds relate, and the principal upon the Bonds to which this suit relates. NAR/Wheland has its principal place of business in Chattanooga, Tennessee. NAR/Wheland are not parties because they are debtors in possession under the consolidated case 01-17271 in the United States Bankruptcy Court, Eastern District of Tennessee, Southern Division. Its headquarters address is 200 East 8th Street, Chattanooga, Tennessee, 37402-2201. Although there is no need to make NAR/Wheland parties at this time, the Bankruptcy Court has ordered NAR/Wheland's cooperation with this proceeding, and it has been further ordered that notice with respect to the subject of this lawsuit and all further pleadings in this case shall be served upon its attorneys in the bankruptcy action, the U.S. Trustee, and also upon counsel for the official Committee of Unsecured Creditors as shown in the service list hereto. If any matters ruled upon in this action require their activity, cooperation, or assertion of an interest or legal position with respect to the administration as it progresses, they will have notice to do so.

16. The Respondents in this action (collectively "Bonding Companies") are as follows

16-1. Respondent United States Fire Insurance Company ("USFIC") is an insurance company incorporated in New York State, with principal offices listed at the Secretary of State's Office as 110 William Street, New York, NY 10038, and licensed to do insurance business in

Tennessee at the times relevant to this action. USFIC issued fidelity bond No. 610-221502-8 for \$975,000, effective as of 11-18-1999, cancelled effective 11-23-2001, the "USFIC Bond", for NAR/Wheland which is the subject of this action. (See Attached USFIC Bond, Exhibit B-1 hereto). The Commissioner is informed based on NAR/Wheland claims information that employees with injuries dating from the effective period of the USFIC Bond have outstanding workers compensation claims. Respondent USFIC may be served through Jim Rochotte, Crum & Forster, P.O. Box 1973, Morristown, New Jersey 07960-1973. USFIC has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, USFIC may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d).

16-2. Respondent United States Fidelity and Guaranty Company ("USF&G") is an insurance company with principal offices in Baltimore, Maryland, and licensed to do insurance business in Tennessee at the times relevant to this action. USF&G issued fidelity bond Bond no. 51-0110-17921-96-01, effective 02-12-1996 for \$350,000; effective 10-01-1998 increased to \$600,000 (with aggregate liability not to exceed \$600,000), cancelled effective 02-12-2000, (the "USF&G Bond") for NAR/Wheland which is the subject of this action. (See Attached USF&G Bond, Exhibit B-2 hereto). The Commissioner is informed based on NAR/Wheland claims information that employees with injuries dating from the effective period of the USF&G Bond have outstanding workers compensation claims. Respondent USF&G may be served through Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203 or through Steven

Schoenhar, Esq., USF&G, 5801 Smith Avenue, Baltimore, Maryland 21209. USF&G has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, USF&G may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d).;

16-3. Respondent Employers Reinsurance Corporation (“Employers Re”) is an insurance company with principal offices listed at the Secretary of State’s Office as 5200 Metcalf, P.O. Box 2991, Overland Park, Kansas 66201-1391, and licensed to do insurance business in Tennessee at the times relevant to this action. Employers Re issued fidelity bond Bond No. DC-32182-X, effective 06-30-1988 for \$200,000; effective 08-02-1990 increased to \$300,000; effective 06-30-1991 bond number changed to DC-32830-X; effective 11-03-1993 increased to \$350,000, cancelled effective 02-12-1996, (the “Employers Re Bond”) for NAR/Wheland which is the subject of this action. (See attached Employers Re Bond, Exhibit B-3 hereto). The Commissioner is informed based on NAR/Wheland claims information that employees with injuries dating from the effective period of the Employers Re Bond have outstanding workers compensation claims. Respondent Employers Re may be served through Mr. Gary Newkirk, 5200 Metcalf, Overland Park, KS 66201. Employers Re has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, Employers Re may be served by summons on

the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d);

16-4. Respondent Utica Mutual Insurance Company ("Utica") is an insurance company with principal offices located in Utica, New York, and licensed to do insurance business in Tennessee at the times relevant to this action. Utica issued fidelity bond Bond no. SU 36155, effective 07-01-1985 for \$200,000, cancelled effective 07-01-1988, (the "Utica Bond") for NAR/Wheland which is the subject of this action. (See attached Utica Bond, Exhibit B-4 hereto). The Commissioner is informed based on NAR/Wheland claims information that at least one employee with injuries dating from the effective period of the Utica Bond had workers compensation claims activity in the year prior to the NAR/Wheland bankruptcy filing. Respondent Utica may be served through George Wardley, Esq., Corporate Secretary, Utica Mutual Insurance Company, Box 530, Utica, New York, 13503. Utica has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, Utica may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d);

16-5. Respondent Insurance Company of North America ("INA") is an insurance company with principal offices located in 1600 Arch Street, Philadelphia, Pennsylvania, and licensed to do insurance business in Tennessee at the times relevant to this action. INA issued fidelity bond Bond No. 913319, effective 07-01-1976 for \$68,000, effective 07-01-1977 increased to \$80,000; effective 09-01-1979 increased to \$125,000; effective 09-01-1983

increased to \$200,000, cancelled effective 07-01-1985, (the "INA Bond") for NAR/Wheland which is the subject of this action. (See attached INA Bond, Exhibit B-5 hereto). The Commissioner is informed based on NAR/Wheland claims information that no employees with injuries dating from the effective period of the INA Bond had workers compensation claims activity in the year prior to the NAR/Wheland bankruptcy filing, however, upon giving notice to the NAR/Wheland employees, it is possible that employees could assert claims in this action. Respondent INA may be served through Mr. John Mangan, TL331L, ACE USA, 1601 Chestnut Street, Philadelphia, PA 19103. INA has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, INA may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d). and

16-6. Respondent Safeco Insurance Company of America ("Safeco") an insurance company with principal offices located in Duluth, Georgia and licensed to do insurance business in Tennessee at the times relevant to this action. INA issued fidelity bond Bond No. 2439369, effective 07-01-1974 to 07-01-1976, (the "Safeco Bond") for NAR/Wheland which is the subject of this action. (Correspondence related to the Safeco Bond is attached hereto as exhibit B-6, and the Commissioner begs leave to file such bond when obtained as a late-filed exhibit to this Petition). The Commissioner is informed based on NAR/Wheland claims information that no employees with injuries dating from the effective period of the Safeco Bond had workers compensation claims activity in the year prior to the NAR/Wheland bankruptcy filing, however, upon giving notice to the NAR/Wheland employees, it is possible that employees could assert

claims in this action. Respondent Safeco may be served through Ms. Annette Wisong, 2055 Sugarloaf Circle, Duluth, GA 30097, or through the Commissioner. Safeco has been notified that the Commissioner is going to call the bond through this action and has made no payments to date to the Department or directly to any insureds under the performance bond. Additionally, in an action instituted on behalf of the Commissioner, Safeco may be served by summons on the Secretary of State's Office as agent, in lieu of the Commissioner, as provided by T.C.A. § 56-2-504(d).

16-7. If any bonds for prior effective dates are located and claims against them are asserted, the Commissioner will beg leave to Amend this Petition to name such bond companies as Respondents.

17. The numerous Tennessee employees who are potentially able to make claim against the Bonds have not been named as individual Repondents in this action. The Department is still in the process of obtaining information as to known workers' compensation claimants and employees with injuries from the employer and the third party administrator. Moreover, the Commissioner intends that upon the grant of the administration, the Receiver (or the Respondents collectively) shall be responsible for identifying the employees and others requiring notice of this case and for sending out all such notices to prospective claimants of the administration, any bar dates established and the injunctions. It is anticipated that the employees shall not have to file answer--instead to file a proof of claim on the Bonds fund if they wish to receive any benefit. The State does not require them to plead an answer to this Petition, but they may appear and file their claims on the Bonds with the Receiver in this suit when an administration is established.

18. Any other persons and entities which would ultimately make a claim on the Bonds are unknown at this time. The Bankruptcy Order currently limits claims against the Bonds to this action and stays all other such actions in state or federal court against the State of Tennessee, NAR/Wheland, or the Bonding Companies with respect to claims against the Bonds. The Commissioner's proposed Order in this case contemplates that the Receiver, with the aid of the NAR/Wheland claims files, claims administrator and other available information of the Department or NAR/Wheland bankruptcy case, will identify and give notice to those persons and entities who may need notice of this action, its injunctions, and the opportunity for filing claims. As proposed, the Receiver shall show the Court the steps taken to identify such potential claimants, and may seek further orders of the Court to determine who reasonably is entitled to notice. The Commissioner reserves any position as to the validity or payability of claims out of the Bonds to other types of workers' compensation creditors of the employer.

GROUND FOR BOND COMPANIES TO TENDER

THE BONDS TO THE STATE

19. As alleged, the Bonds bind the Respondent Bonding Companies for any default of the principal, NAR/Wheland, in discharging its liability to employees or their dependents for workers compensation benefits. NAR/Wheland is in default since the filing of its petition in bankruptcy, and the monetary extent and time-period coverage of that default is uncertain at this time, but believed to be in excess of one million dollars. Accordingly, the Commissioner alleges the conditions for the State calling each of these Bonds are present and the Court should find the Bonds are payable to the State, and order their maximum penalty to be furnished for the use and

benefit of the employees who bring claims, until it is determined that any funds remain for return to the Bond Companies.

GROUND FOR ESTABLISHING RECEIVERSHIP/ADMINISTRATION AND RELATED INJUNCTIVE RELIEF

20. Tenn. Code Ann. § 29-1-103, the general authority for receivership in the Courts of this State, vests all courts of record with power to appoint receivers for the safekeeping, collection, management, and disposition of property within the subject matter of litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery. A receivership is an equitable proceeding over which Chancery Court exercises substantial discretionary authority. A receiver holds the funds of an insolvent as if a trustee for the benefit of claimants of the estate and has the duty to make an accounting to the court and the creditors and claimants of the insolvent's estate. *Matter of Liquidation of United American Bank*, 743 S.W.2d 911, 916 (Tenn. 1987). Similarly, under long-standing equity principles, securities deposited under the requirements of statute with a state officer by an insurance company for the security and benefit of policyholders and creditors were not subject to attachment at law, but they could have been impounded in chancery. *Pennebaker v. Tomlinson*, 1 Cooper's Tenn. Ch. 111 (1873); *Pennebaker v. Tomlinson*, 1 Cooper's Tenn. Ch. 594 (1874). Such deposits must in the case of insolvency of the insurance company, be shared by the statutory beneficiaries pro rata, and one creditor cannot acquire any prior rights over the others. *Id.*, *Smith v. Cunningham*, 2 Cooper's Tenn. Ch. 565 (1875).

21. For the purpose of administering and distributing the assets of a corporation so as to do justice to all the parties, one chancery court may enjoin the prosecution of separate suits in

that court or other chancery courts, and draw all the litigation into one case, so that it may be conducted as an insolvency proceeding. *Smith v. St. Louis Mut. Life Ins. Co.*, 3 Tenn. Ch. 502 (1877); *Baxter v. Nashville & Hillsboro Tpk. Co.*, 78 Tenn. 488 (1882); *Voightman & Co. v. Southern Ry.*, 123 Tenn. 452, 131 S.W. 982, 1912C Ann. Cas. 211 (1910); *Adams v. Chattanooga Co.*, 128 Tenn. 505, 161 S.W. 1131 (1913).

22. Because of the need to do justice to all the claimants on a limited fund, the Order requested by the Commissioner invokes these equitable principles to seek an injunction barring other claims on the State or the Bonds except as allowed through this action, and to appoint a receiver to take the claims and act on behalf of the fund and its statutory purposes. Six prior administrations of such deposits or bond funds have occurred in Tennessee at the instance of the State, five of which have been conducted in Davidson County Chancery Court, and the other of which was administered by the Department in the bankruptcy case for an employer filed in Chattanooga. The funds in each have been administered by a nominee of the Commissioner, and liquidated and administered under the supervision of the Court with payment of administrative expenses made, in each case, out of the fund being administered.¹

THE PLAN OF RECEIVERSHIP/ADMINISTRATION

¹The Department has previously administered workers' compensation self-insurance security through similar administration receiverships in equity jurisdiction by the Davidson Chancery Court, in the cases styled *Douglas M. Sizemore etc. v. Builder's Transport, Inc. Debtor in Possession, Utica Mutual Insurance Company, et al.*, Docket No. 98-2962-II; *Douglas M. Sizemore, etc. v. Tennessee River Inc., Debtor in Liquidation*, Docket No. 99-298-I; *Douglas M. Sizemore, etc. v. Scotts Hill Leisurewear, Inc. et al.*, Docket No. 98-1002-III, *State of Tennessee etc. v. Utica Mutual Insurance Company, Herchel Brown*, Docket No. 96-2042-III and *Willie Jeffery Byford, Petitioner, v. State of Tennessee Department of Commerce and Insurance, Defendant, Counter-Claimant and Third-Party Plaintiff, vs. Willie Jeffery Byford, and First American National Bank, et al.*, Docket No. 91-3424-II.

23. The Commissioner alleges that the circumstances of NAR/Wheland's non-payment of self-insured workers' compensation claims, the existence of the Bonds, and the bankruptcy court's order authorizing this Petition, supply good cause for the issuance of the Order prayed for at the conclusion of this Petition requiring a turn-over of Bond Proceeds and outlining the plan of administration of the Bonds. Administration also is an indispensable element for deriving the benefit of any insurance policy, and a necessary component of the Bond Companies' liability, in that the use and benefit of the Bonds cannot be supplied to the ultimate recipients without such administration.

24. Under the prayed-for Order, this Court will essentially supervise the filing and determination of workers compensation claims against the Bonds. The Court will obtain jurisdiction and control over the funds of the Bonds released now by the Bankruptcy Court so that the money can be applied to its statutory purposes. The Court can appoint a receiver to carry out the responsibilities for giving notice of this action to potential claimants, to receive all claims filed by a prompt claims deadline, to allow rapid examination and evaluation of the claims with the aid of a claims administrator, (such as NAR/Wheland's claims administrator, Collins & Company), currently uniquely familiar with the NAR/Wheland files. The receiver will then negotiate with claimants and proceed toward a comprehensive recommendation to this Court on claims payment.

25. The proposed Order is flexible enough to permit the Receiver to obtain further instructions or file motions. The proceeding permits the receiver or other parties to assert interests and the Court to act if specific arrangements are justified for medical care or other compensation benefits. The receiver may report to the Court if the claims exceed or could

exceed the Bonds, or any one of them. Claims may need individual court hearing, or the receiver may seek settlements. The receiver should promote fairness and the interest of the employee claimants as a whole, seeking efficient and just resolution. Interested parties would have an opportunity to comment on or object to the plan of distributions. All claims against the Bonds must be filed in this action, to allow the receiver, with the approval of this Court, to pay from the Bonds or to have paid by the Bonding Companies (1) the receiver's time, administrative costs or other expenses of this process, including administrative expenses associated with obtaining the determination of the claims administrator with respect to the valuation of the claims; and, (2) the claims of all persons who have unpaid workers' compensation benefits, pro rata if necessary. The appropriate manner and the extent to which all such payments would be made will be ruled upon by this Court.

26. The Order requires the Bonding Companies to furnish the bond proceeds to the Commissioner subject to the orders of this Court. The Commissioner recommends that she be allowed to invest any funds in the State Investment Pool and/or Local Government Investment Pool at interest as appropriate or any other fiduciary accounts available to her and to make the funds available for Court-authorized payments by the receiver. After paying workers' compensation benefits, receiver's fees and administrative expenses, if there is any remaining fund, the Order provides that it shall be returned to the Bonding Companies.

27. The Commissioner proposes that a receiver carry out the overall administrative and legal evaluative duties imposed by the Order, and has recommended Jeanne Barnes Bryant, a licensed Tennessee attorney, as a proposed receiver. (See Commissioner's Verification and Affidavit attached to this petition). The basis for the recommendation is that Jeanne Barnes

Bryant has extensive experience acting as a receiver in insurance receiverships in the Chancery Courts of Davidson County, and for other types of receiverships connected with the State of Tennessee, and in other courts for workers' compensation receiverships, all involving similar claims administration. Jeanne Barnes Bryant is willing to perform the duties of the receiver, at the rate of \$95/hour. *See* Affidavit of Jeanne Barnes Bryant, attached as Exhibit C. The Commissioner therefore deems that Ms. Bryant has the means and qualifications to speedily, efficiently and economically carry out the proposed order, and to act as an officer under the direction of this Court. The Commissioner would anticipate that the receiver will need specialized workers compensation support for the potential magnitude of claims (over 200) that could be received in this action, and may also have to apply for counsel to defend matters which have not been able to be resolved. The Commissioner recognizes, however, that the appointment of a receiver lies within this Court's sound discretion and pledges the Department's cooperation with any person so appointed.

28. Further, the Commissioner deems that the current administrator on NAR's workers' compensation claims, Collins & Company, based in Chattanooga, Tennessee, has shown the likelihood of being able to evaluate the claims for workers' compensation benefits at an economical rate. (See attached Brochure of Collins & Company, Exhibit D) The use of Collins & Company would benefit a receiver through its familiarity with the claims and as a source of prompt information. Collins & Company has indicated that the rates and expense basis it would apply to any services rendered here would be charged at the same rates as those to NAR/Wheland, and for any different types of services required, at comparable market rates. After Collins & Company supplies the receiver with an expedited evaluation of any proofs of

claims referred to it by the receiver, the receiver shall attempt to negotiate any settlements of claims or develop any other appropriate legal position with respect to the claims. Because some of these services will be needed at the start of this case so as to send out notices and the proofs of claims, the Commissioner proposes that the Receiver be permitted to make expenditures up to \$5000 for the initial giving of notice and set-up of a mechanism to receive the proofs of claims. All services shall be documented through invoice and must be approved by the receiver and the Court as reasonable prior to payment out of the Bonds, with the exception of the initial \$5000.

29. Under the proposed Order, as well as consistent with the Bankruptcy Order, the Commissioner's liability to claimants or any other persons with respect to the Bonds, shall be limited to those payments and administrative costs and other expenses finally approved by this Court as payable out of the Bonds funds, to the extent that those funds had been released by the Bonding Companies and placed at the Commissioner's disposal. This is because the Bonds were posted by NAR/Wheland to secure its own direct financial obligations as an employer to its employees and attendant administration of those claims. It is the Commissioner's position, as in prior cases, that the State should not be burdened with the costs associated with discharging the employer's defaulted liabilities and administering this fund, and indeed has sovereign immunity against the imposition of such costs, and therefore all such expenses should be satisfied out of this special fund and allowed as a claim on the fund. Therefore the Commissioner and State request that the reasonable expenses of administration, the costs of the action, and examination of the claims by the receiver be satisfied from the Bonds and/or the Bonding Companies.

30. An injunction is needed for the pendency of this administration, to prevent any attempted filings under Tenn. Code Ann. § 50-6-405 other than as specifically authorized by this

Court, and the Bankruptcy Court, against the Commissioner, the Department, NAR/Wheland and/or the Bonds, all of which may be at risk for multiple lawsuits theoretically seeking satisfaction from the Bonds proceeds in Hamilton County, or, improperly, in other courts. The temporary injunction conserves the Commissioner's and Bonds' resources for their statutory purpose, and the most efficient, fair resolution of any claims on the proceeds, rather than for responding to successive or competing litigation. The temporary injunction, the imposition of a claims bar date, and subsequent permanent injunctive relief, are consistent with the Bankruptcy Order, that denies relief from the stay for workers' compensation claims by the Tennessee employees on the Bonds except through this case. The Commissioner cannot issue unilateral orders to enjoin separate court actions or levies where the statute clearly contemplates that suits be brought to reach the fund. The Commissioner seeks to avoid the irreparable harm of making payments and then receiving any challenge that payments were unfair, preferential or inconclusive, particularly if claimants may have to receive less than their full claims. Therefore, this Chancery Court upon taking equitable jurisdiction over the Bonds should afford temporary and permanent injunctive relief against other lawsuits which might be filed or are pending to obtain these proceeds. The injunction specifically shall not prevent any determination as among the Bond Companies, or the estate of NAR/Wheland with respect to entitlement to any proceeds remaining after the administration and payment of all other claims.

EXPEDITED HEARING REQUEST

31. The petitioner requests that this Court immediately set a hearing date on this Petition for Temporary and Permanent Injunctive Relief for Turnover of Bond Proceeds and for appointment of a Receiver/Administrator, and that notice of such hearing be contained in a

Proposed Order Setting Hearing, (filed herewith) to be served on the parties and other interested persons on the attached service list on Exhibit E, at which time the prayed-for Order will be considered. Because the Bankruptcy Court has authorized the administration pursuant to the State's emergency motion, and the parties have been apprised that this Petition was contemplated, there is no reason to delay the administration beyond a short period designed to serve the Petition and Order to Show Cause on the Respondents and to permit their response. The total of potential claimants and employees will receive notice of this action once the administration has been established.

WHEREFORE THE PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 20-13-101.
2. That this Court immediately set a date and time for hearing pursuant to the proposed Order Setting Hearing, that will promptly consider whether to grant this Petition for the proposed Order For Turn-Over of Bond Proceeds and Appointing Receiver to administer the Bonds and the Commissioner's request for a Temporary Injunction, with sufficient time for mailing notice and serving the petition and hearing order on all Respondents and to all others who are required to be notified of the pleadings in this case according to the Bankruptcy Order,
3. That this court Order the Bond Company Respondents immediately to turn over the penal sum of the Bonds to the State of Tennessee, Commissioner of Commerce and Insurance, pending the outcome of the claims administration in this case, as follows: USFIC - \$975,000; USF&G - \$600,000; Employers Re - \$350,000; Utica - \$200,000; INA - 200,000; Safeco - to the penalty amount of its bond (or as permitted by further order of this Court to be

paid over). Any failure of such Respondents to make payment shall be promptly reported to the Court to make such further orders as appropriate;

4. That this Court issue the appropriate temporary injunctions set forth below and order the commencement of the administration of the Bonds, so as to provide notice to potential claimants of this case and their ability, by the bar date established by the Court, to file a proof of claim to entitlement to outstanding workers compensation benefits under Tennessee state law, which shall be the exclusive method of making any claim on the Bond funds. That in connection with such administration, the Court appoint a receiver (hereinafter "Receiver") for the administration of the Bonds, and that the person to be appointed, as recommended by the Commissioner, be Jeanne Barnes Bryant, a licensed attorney who has acted as special deputy receiver for the Commissioner in insurance company and other similar receiverships, and who as a result has the ability and resources to efficiently and economically handle the receivership and administration of the Bond funds. Ms. Bryant if appointed shall be paid for her time \$95/hour. The Receiver may file such reports and required accountings ordered in the Plan of Receivership as an officer of the Court. Further, that the order for administration and Plan of Receivership, if the Court appoints a receiver, be granted on the terms that follow:

Order and Plan of Receivership and Temporary Injunction

A. The BONDS held for the use and benefit of NAR/Wheland's Tennessee or other employees entitled to the benefits of Tennessee's workers' compensation law, and (collectively referred to as "the Bonds") shall be jointly administered by the Receiver appointed by this Court, under the supervision of this Court, for the payment of due and properly-owed self-insured claims of or relating to NAR/Wheland's Tennessee employees

injured in the course and scope of their employment during the period of the employers' self-insurance covered by the Bonds and for the payment of the cost of this administration.

B. The Respondent Bond Companies: shall forthwith pay on the Bonds to the order of the Commissioner of Commerce and Insurance for the pendency of this action, as follows: USFIC - \$975,000; USF&G - \$600,000; Employers Re - \$350,000; Utica - \$200,000; INA - 200,000; Safeco - to the penalty amount of its bond (or as permitted by further order of this Court to be paid over), as directed by the Commissioner or Commissioner's designee, for the sole and immediate purpose of being deposited, at interest for the Commissioner and for the Court for the duration of this receivership, together with any Deposit proceeds, in the State of Tennessee Treasury Department State Investment Pool/Local Government Investment Pool or State Investment Pool, or other fiduciary accounts available to her. The Commissioner shall acknowledge receipt of any sums so paid by any of the foregoing Bond Companies. If any Bond Company is required to pay and does pay total bond proceeds in the maximum penal amounts of the Bonds, the original bonds and a release executed by the Commissioner or appropriate official for the State will be delivered to the Bond Companies, except that such Companies shall also comply with any orders with respect to them in this action.

E. That the Receiver well and truly perform the duties described herein and duly account for all monies and properties that may come into her hands and abide by and perform all things that the Receiver shall be directed to do by this and further orders of this Court;

F. The Receiver shall diligently attempt to identify and give notice to persons who reasonably would be expected to make claim on the Bonds. Any third party administrators for NAR/Wheland, and any attorneys representing injured workers and the workers themselves shall fully cooperate with the Commissioner and Receiver in all respects, including turnover of requested records, including workers compensation activities and medical records. The Receiver shall assemble and determine the validity of the claims by employees who have claims and any other claims which the Receiver, through reasonable diligence, may ascertain exist against the workers' compensation self-insurance Bonds of NAR/Wheland.

G. That the Receiver give notice of this action and of the claims filing deadline and procedures for filing such claims to the claimants through such notice as the Receiver deems necessary in order to provide adequate and timely notice and information to all potential claimants, and that the Receiver obtain such information from NAR/Wheland and their former claims administrator (Collins & Company) with regard to identifying potential claimants as is available. The Receiver shall give notice to claimants known as of entry of this Order within 15 days after entry, and shall serve potential claimants identified thereafter with notice as soon as practicable. The Receiver may apply for interim, expedited approval of this Court for costs and expenses associated with the giving of this notice, and may seek guidance from the Court on the extent of notice to be given.

H. That any Tennessee employees of NAR/Wheland, or NAR/Wheland employees otherwise entitled by law to receive benefits under the Tennessee workers'

compensation statutes, and any other claimants who intend to make claim on any proceeds of the Bonds, be required to file their claims in this action to allow the Receiver, with the approval of this Court, to pay from the Bonds (1) the receiver's time, administrative costs or other expenses of this process, including administrative expenses associated with obtaining the determinations of the claims administrator with respect to the valuation of the claims, or any other services required of a claims administrator and (2), on a pro-rata basis within any classes of claims and according to any priorities established by this Court, the valid claims of all persons who have unpaid workers' compensation benefits. The relative priority, if any, of any claims shall be determined by the Court. The employees and any other claimants are relieved of the requirement to Answer this Petition except by filing these claims, but may appear or file pleadings at any appropriate time to assert their legal rights.

I. That the employees of NAR/Wheland, the Respondents identified in this Petition and any other individuals or entities who do or could make claim on the Bonds (collectively referred to as "claimants"), who receive notice of this Order, be and hereby are restrained and enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Department, NAR/Wheland, the Receiver or the Bonds arising out of their claims against the Bonds described in this Order and the Complaint, except to file claims that are allowed in this proceeding. This injunction does not prevent any filing of claims in the Bankruptcy court; however orders of the Bankruptcy Court may affect claimants' further recoveries. This injunction is in accordance with the injunctive Order of the Bankruptcy Court, and accordingly does also

affect and prohibit the right of claimants to liquidate their workers' compensation claims in the state courts other than through this Court.

J. **Claims Filing Deadline and Bar Date:** That the claimants file their separate claims to the Bond proceeds as provided in this Order, by filing all claims to the proceeds of the Bonds with the Receiver at an address to be designated by the Receiver no later than [_____, 2002] (fill in date sixty (60) days from the entry of this Order). Claimants who have previously initiated court actions will be required to file such proofs of claims, as well as on request to provide copies of all pleadings.

K. That the Receiver be allowed to move this Court for any further instructions, orders or modifications of this order as may be necessary to accomplish the purposes of this administration and liquidation of Bond proceeds.

L. That the Receiver shall determine, with reference to Tenn. Code Ann. § 50-6-405 and in accordance with any other principles and statutes of workers' compensation law, the nature and extent of claims received by the Receiver.

M. That the Receiver shall take into account any other sources of coverage for the claims, and specifically any other policies, in recommending claims allowable against the Bonds.

N. That the Receiver shall submit a report to this Court within 45 days after the claims deadline seeking approval of the Receiver's determination of valid claims and listing the reasons for the denial in whole or in part of dishonored claims. A copy of that report shall also be sent to those claimants whose claims the Receiver proposes to dishonor in whole or in part so that those individuals or entities may file written

objections to such report within the time specified in the report. Any disputes in the determination of the amount to be paid on any claim shall be ruled upon by the Court after an opportunity for hearing on the Report of the Receiver. The Receiver may enter into settlements of any claims amounts which shall be conditioned upon approval by the Court.

O. The Receiver shall provide information to the Commissioner and this Court periodically about the estimated aggregate claims liability, and if any Bonds are not ordered fully paid over at the commencement of this action, the Receiver shall seek further authority from this Court to obtain payments from the Bonds for reserved claims liability as required.

P. That either in conjunction with the Report of the Receiver (setting disputed claims for hearing) or as a separate filing, the Receiver shall recommend to the Court a Plan containing an order of distribution, the amount of recommended claims figures if not previously approved by the Court, and a method of paying the claims that shall be sent to all claimants and persons who are entitled to receive the pleadings in this matter. Should the total monetary value of valid claims against the Bonds, or claims found applicable to any one of the Bonds, exceed the total Bonds, less the reasonable administrative expenses incurred by the Receiver and any other expenses authorized by this Court as necessary to the benefit of this administration and liquidation of the Bonds, the Plan may propose priorities of payment or other classifications. Claimants may file written objections to the plan recommended by the Receiver, and the Commissioner or other notice parties may also have standing with respect to stating a position on the

proposed plan. After opportunity for hearing, the Court may approve or modify said plan, and order payment as the interests of justice require. The Receiver may, but is not required to recommend interim partial distributions in the interest of justice if there are funds for such partial distributions as approved by the court.

Q. That, upon expiration of thirty (30) days after entry of the order of approval by this Court of the report of the Receiver setting forth any Plan of Distribution described above and this Court's determination that no other claims against the Security should be allowed, conditioned upon the availability of the funds provided by the Bonds, the Receiver shall distribute payment to holders of valid approved claims against the Bonds as determined by this Court.

R. That the Receiver submit to the Court a report of final payment within thirty (30) days after completion of disbursement of the proceeds of the Bonds to valid claimants and shall seek an order of discharge accordingly. Upon discharge, the Court's injunctions against further claims relating to the Bonds or their administration against the State, the Bonding Companies, or NAR/Wheland, shall become permanent.

S. That the assembly and determination of claims and the distribution of Bond proceeds shall be performed by the Receiver or through staff under direction of the Receiver, including the Tennessee Receiver's Office, and by consultation with the Receiver's counsel, if any. The Receiver shall be responsible for the giving of the initial notice of the claims process to potential claimants, and shall be entitled to \$5000 from Bond proceeds turned over to fund that initial notice and any publication to employees of NAR/Wheland.

T. The Commissioner has proposed and this Court orders that the Receiver be permitted to employ the services of Collins & Company of Chattanooga, Tennessee, NAR/Wheland's former claims administrator, to aid in determining who reasonably should receive notice and a proof of claim form, to analyze the claims (other than any claim Collins may have) in light of the evidence provided therewith, and their existing information about such claims, and to aid the Receiver in the evaluation and resolution of workers' compensation claims. This order is made to gain the economic benefit and efficiency of services from an entity with prior knowledge and familiarity with the claimants. Collins will be compensated at the same or comparable rates for its reasonable services rendered to the Receiver as it charged to NAR/Wheland, and shall provide evidence of such rates to the Receiver. All services shall be documented by invoice, and with the exception of any of its services provided out of the initial \$5000, shall be paid out of the Bonds only after Court approval. The Receiver shall move the Court for approval to make any other payments to Collins & Company or for the Receiver at regular intervals, no more frequently than monthly, and shall make accounting to the Court no less than quarterly until the conclusion of this matter.

U. That the Receiver be compensated in this matter only for the reasonable administrative expenses incurred and only from the proceeds of the Bonds after application to and approval of this Court. The Receiver may apply for interim approvals in the discretion of the Court. Subject to actual fees and expenses submitted, the Receiver will charge \$95.00 per hour for her time expended on these duties and will charge for administrative expenses.

V. That the costs of this action be paid from the proceeds of the Bonds, or alternatively be ordered paid by the Respondent Bonding Companies and each of them out of their separate assets.

W. That, if this Court refers any matters or claims to a special master for determination, that such costs or reasonable fees of the master be paid from the proceeds of the Bonds, or by Respondent Bonding Companies and each of them, which payment shall be established in the Order of Reference;

X. That the Receiver be permitted to recover the Receiver's reasonable attorneys fees approved by this Court, if these services have been obtained with the approval of the Court and are found necessary to the proper administration of the Bonds proceeds and the aid of the Receiver in performing the Receiver's duties under this Order.

Y. That the Receiver make proper and appropriate accounting of all disbursements from the Bonds proceeds;

Z. That the State's liability to claimants or any other persons with respect to the Bonds for payment out of the Bonds proceeds shall be limited to those payments and administrative costs and other expenses finally approved by this Court and actually made from the Bonds proceeds, to the extent those funds had been released by the Bond Companies and placed at the Commissioner's disposal plus any interest those proceeds may have accrued while held by the Commissioner or by the Receiver or as otherwise ordered by this Court.

AA. That if the allowed claims and administrative expenses do not exceed the Bond proceeds, upon completion of the administration of the Bonds, after all claims have

been fully and finally settled, any remainder of funds are to be paid as ordered by this Court. If a determination of the relative entitlement to the remaining proceeds between the Respondent Bond Companies is required, it shall be determined by this Court.

BB. This Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101.

5. That, if the Court rejects the plan of receivership and administration and no administration is funded, the Commissioner alternatively proposes that the Court order the Bonding Companies and permit the State to tender any Bond proceeds made available into this Court until the Court disposes of claims against them. The Commissioner requests in such instance that appropriate equity be established by this Court and alternative means be established such as a Special Master appointment under T.R.C.P. 53.01, billed to the expense of Respondents or the Bond Proceeds, to accomplish notice to claimants, the timely receipt of claims, the holding of hearings, and the determination of appropriate payment from the Bond Proceeds, and by this Court imposing an injunction and bar against further claims against the funds.

6. That copies of all pleadings filed in this action shall be served on the Receiver, NAR/Wheland, the Bond Company Respondents, the undersigned Attorney General's Office, the NAR/Wheland United States Trustee, the NAR/Wheland counsel, and the Unsecured Creditors'

Committee and the party involved in the particular subject matter of the pleading. The Court may direct such other service as appropriate by further order.

7. That summons issue to the Respondents in this matter; and

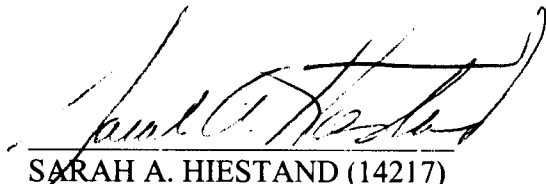
8. For the award of any and all further, general and equitable relief to which the State may be entitled.

THIS IS THE FIRST REQUEST FOR EXTRAORDINARY RELIEF.

Respectfully submitted,

A large, bold, handwritten signature in black ink, appearing to read "Paul G. Summers".

PAUL G. SUMMERS (6285)
Attorney General
State of Tennessee

A handwritten signature in black ink, appearing to read "Sarah A. Hiestand".

SARAH A. HIESTAND (14217)
Senior Counsel
Office of the Attorney General
Financial Division
P. O. Box 20207
Nashville, TN 37202-0207
(615) 741-6035
Attorney for Petitioner Anne B. Pope,
Commissioner of the Tennessee Department of
Commerce and Insurance

**IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT, HAMILTON COUNTY**

STATE OF TENNESSEE, ex rel. ANNE B. POPE,)
in her official capacity as COMMISSIONER OF THE)
TENNESSEE DEPARTMENT OF)
COMMERCE AND INSURANCE,)

Petitioner,)

No. _____

vs.)

UNITED STATES FIRE INSURANCE COMPANY;)
UNITED STATES FIDELITY AND GUARANTY)
COMPANY; EMPLOYERS REINSURANCE)
CORPORATION; UTICA MUTUAL INSURANCE)
COMPANY; INSURANCE COMPANY OF NORTH)
AMERICA; and SAFECO INSURANCE COMPANY)
OF AMERICA)

Respondents.)

In matter of Bonds held by the Commissioner)
for Workers' Compensation Self-Insurance of Tennessee)
employer, NORTH AMERICAN ROYALTIES, INC.,)
and its subsidiaries, Wheland Holding Company, Inc.,)
Wheland Manufacturing Company, Inc. and Wheland)
Foundry, LLC, debtors in possession;)

VERIFICATION AFFIDAVIT

1. I, Anne B. Pope, am the Commissioner of the Department of Commerce and Insurance for the State of Tennessee and the petitioner in the foregoing action.

2. I have read the Verified Petition and swear that the information contained therein is true and correct to the best of my knowledge, information and belief. The Bonds attached to the Petition are certified to be true and correct copies of such Bonds found in the official records of the Insurance Division.

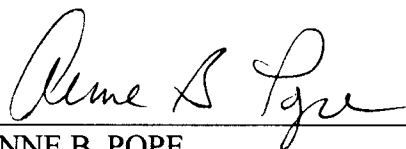
3. The Order requested by the foregoing Petition, the preliminary injunction and the request for expedited hearing to establish the administration are needed to quickly allow the workers' compensation claimants to assert their claims for benefits from this fund, and to assure that the bond funds are made available in this State promptly for the payment of any and all approved payments. Due to the large size of the employer and the numerous active claims reported by the employer, the Department requests a speedy start to the administration of those claims through this case. The order will also protect the Bonding Companies, this Department and the employer from the irreparable harm of any multiple or competing lawsuits seeking payment, and to conserve the Bonds equitably for their statutory purpose of the use and benefit of all the employee claimants.

4. I hereby recommend to the Court the appointment of Jeanne Barnes Bryant, Esq., a Tennessee licensed attorney, to be the receiver for the Bonds. I base this recommendation on the fact that Ms. Bryant has been appointed by Commissioners of this Department as Special Deputy Receiver for many prior insurance company receiverships as well as appointed Receiver for the workers' compensation self-insurance receiverships for Humbolt Express and I.Appell. Ms. Bryant is Operations Director of the Tennessee Receivers Office, an entity which has administrative capability for routine receivership functions, such as the giving of notice, mailing of proof of claims, and review of claims, and accounting for funds within the various receiverships. As a consequence of those appointments, and staff, as well as her prior experience as receiver, it is my opinion that Ms. Bryant has the knowledge and staff to conduct the administration of these Bonds efficiently and properly under the Court's supervision and would be qualified for that role. She has proposed to receive \$95/hour for her time devoted to

responsibilities of receiver in this matter, and to charge for administrative expenses.

5. Further, I hereby recommend that the existing claims administrator for NAR/Wheland, Collins & Company, of Chattanooga, Tennessee, be accepted by this Court as appropriate to begin work to aid the receiver in the evaluation of all the claims that may be filed against these Bonds. The claims administrator, by virtue of its prior contract with NAR/Wheland until the bankruptcy petition of NAR, is familiar with the workers' compensation claimants and files, and the reserves established for such claims. Collins & Company has proposed to this Department to assist the receiver in the administration of the claims in this proceeding, to provide information to the receiver and would agree to evaluate the claims files or perform other required services at rates the same as those charged to NAR/Wheland, and at comparable rates for any different services required for this specialized administration. Because of the economies and other advantages of using the existing administrator, it is my recommendation that the receiver should be able to enlist the services of this administrator, to aid in seeking to settle the claims or litigating their final value as a claim against the Bonds. Thus, the plan of administration calls for this service to be established, and paid for subject to the approval of this Court.

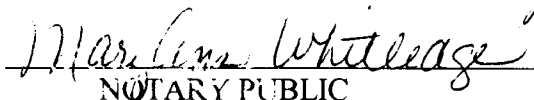
Further affiant sayeth nought.



ANNE B. POPE

Commissioner, Department of Commerce and
Insurance for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 22nd day of January,
2002.


NOTARY PUBLIC

My Commission Expires: June 18, 2005